

**DEBARMENT POLICY
DEPARTMENT OF MANAGEMENT AND BUDGET**

In accordance with Sections 261 and 264 of the Management and Budget Act, MCL 18.261 and 18.264, and Executive Order 2003-1, the Department of Management and Budget (DMB) may debar a vendor from participating in the state bid process and from contract award. Debarment of a vendor is not meant to be a punishment, but a procedure to ensure that state-funded business is conducted legally with responsible parties, maintaining the integrity of the State's procurement process. DMB maintains a list of vendors that are debarred from doing business with the State.

Reasons for Debarment: DMB may debar a vendor for any of the following reasons:

1. A finding by the Director of DMB, upon recommendation by a division director, that a vendor, or an officer or owner of a 25% or greater share of the vendor, has within the last three (3) years demonstrated a lack of integrity that could jeopardize the state's interest if the state were to contract with the vendor. Factors which may result in a finding that a vendor is not able to perform responsibly include, but are not limited to, any of the following:
 - a. A conviction of a criminal offense incident to the application for or performance of a contract or subcontract with the State of Michigan or any of its agencies, authorities, boards, commissions, or departments.
 - b. A conviction of a criminal offense which negatively reflects on the vendor's business integrity, including but not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, negligent misrepresentation, price-fixing, bid-rigging, or a violation of state or federal anti-trust statutes.
 - c. A loss or suspension of a license or the right to do business or practice a profession, the loss or suspension of which indicates dishonesty, a lack of integrity, or a failure or refusal to perform in accordance with the ethical standards of the business or profession in question.
 - d. A conviction of a criminal offense or other violation of other state or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which in the opinion of DMB indicates that the vendor is unable to perform responsibly or which reflects a lack of integrity that could negatively impact or reflect upon the State of Michigan, including but not limited to, any of the following offenses under or violations of:
 - i. The Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.101 to 324.90106.
 - ii. A persistent and knowing violation of the Michigan Consumer Protection Act, 1976 PA 331, MCL 445.901 to 445.922.
 - iii. 1965 PA 166, MCL 408.551 to 408.558 (law relating to prevailing wages on state projects) and a finding that the vendor failed to pay the wages and/or fringe benefits due within the time period required.
 - iv. Repeated or flagrant violations of 1978 PA 390 MCL 408.471 to 408.490 (law relating to payment of wages and fringe benefits).
 - v. A willful or persistent violation of the Michigan Occupational Health and Safety Act, 1974, PA 154, MCL 408.10001 to 408.1094,

- including: a criminal conviction, repeated willful violations that are final orders, repeated violations that are final orders, and failure to abate notices that are final orders.
- vi. A violation of federal or state civil rights, equal rights, or non-discrimination laws, rules, or regulations.
2. A finding by the Director of DMB, upon recommendation by a division director, that the vendor is not able to perform responsibly, based upon any of the following:
 - a. Violation by the vendor of bid solicitation procedures or violations of the terms of a solicitation after bid submission.
 - b. Failure by the vendor to substantially perform a state contract or subcontract according to its terms, conditions, and specifications within specified time limits.
 - c. Refusal by the vendor to provide information or documents required by a contract, including but not limited to, information or documents necessary for the State to monitor contract compliance.
 - d. Failure by the vendor to respond to requests for information regarding vendor performance or accumulating repeated substantiated complaints regarding performance of a contract or purchase order.
 - e. Failure of the vendor to perform a state contract or subcontract in a manner consistent with any applicable state or federal law, rule, or regulation.

Reporting Requirements: To maintain status as an active vendor, DMB will require all vendors to annually report the following:

1. All officers of the vendor.
2. All persons owning a 25% or greater interest in the vendor.
3. Any conviction or violation of state or federal law as determined by a court of competent jurisdiction or in an administrative proceeding attributable to the vendor, an officer of the vendor, or a person owning a 25% or greater interest in the vendor within the last 3 years.

State departments or agencies shall report to DMB any convictions or violation of law, the department or agency becomes aware of, attributable to a vendor, an officer of the vendor, or a person owning a 25% or greater interest in the vendor, which in the opinion of the department or agency may constitute grounds for debarment by DMB.

Debarment Procedure: DMB will issue a notice of proposed debarment to a vendor subject to debarment and any specifically named affiliates by certified mail, return receipt requested, or by courier service. All of the following shall be included in the notice:

1. A statement that proposed debarment action is being considered by DMB.
2. A description of the reasons for the proposed debarment in sufficient detail to put the contractor on notice of the conduct and causes upon which proposed debarment is based.
3. A statement indicating that within twenty (20) calendar days from the date of the notice, the contractor may submit, in writing, information in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts and any mitigating circumstances.
4. Explanation that the vendor has twenty (20) calendar days to request a hearing.

5. A statement that failure by the vendor to respond with a written request for a hearing within twenty (20) calendar days, will result in debarment by DMB without a hearing.
6. A description of the potential implications of debarment.

In actions based upon criminal conviction or civil judgment, or in which there is not a genuine dispute over material facts as determined by the DMB official, the DMB official shall make a decision on the basis of all the information in the administrative record, including any submission made by the vendor. The decision shall be made within sixty (60) calendar days after date of the notice of proposed debarment. The DMB official may extend this period for good cause.

In actions in which there are disputed material facts, the DMB official shall hold a hearing, if requested by the vendor, to gather facts from the vendor and state personnel. Notice of the hearing shall be sent by certified mail, return receipt requested, or courier service to the vendor within ten (10) business days prior to the hearing.

If debarment is imposed, the vendor and any affiliates involved shall be given prompt notice by certified mail, return receipt requested, or by courier service. The notice of debarment shall include the following information:

1. Reference to the notice of debarment.
2. Specific reasons for debarment.
3. The period and scope of debarment including the effective dates.
4. An explanation that the vendor has ten (10) business days after receipt of the notice of debarment to protest the debarment in writing to the Director of DMB.

If debarment is not imposed, the DMB official shall promptly notify the vendor and any affiliates involved by certified mail, return receipt requested, or by courier service.

Debarment Protest: A debarred vendor may protest the debarment action by written submission to the Director of DMB stating in detail the reasons that debarment is in error. The written protest shall be received within ten (10) business days after the date of the notice of debarment. The Director of DMB shall review all facts on which the debarment was based and the vendor's protest, and shall make a decision within thirty (30) calendar days after receipt of the protest to either uphold or overturn the debarment. The vendor shall be notified in writing of the decision. The vendor may seek review of the decision in a court of competent jurisdiction consistent with Section 631 of the Revised Judicature Act of 1961, 1961 PA 236, MCL 600.631.

The Director of DMB may reduce the debarment period, upon the debarred vendor's request, supported by documentation for the following reasons:

1. Newly discovered material evidence.
2. Reversal of the conviction or civil judgment upon which the debarment was based.
3. A good faith change in ownership or management.
4. Elimination of other causes for which the debarment was imposed.

Period of Debarment: Debarment shall be for a period commensurate with the seriousness of the vendor's actions and causes for debarment not to exceed eight (8) years. Under past practices of DMB, while not limiting, the debarment period usually has not exceeded three (3) years. After the debarment period expires, the vendor may reapply for inclusion on bidder lists through the regular application process.

Effect and Scope Debarment: Debarment affects all divisions or other organizational units of the vendor, unless the debarment decision is limited by its terms to specific divisions or organizational units. The debarment decision may extend to any affiliates of the vendor, if the affiliate is specifically named in the notice of debarment and given written notice of the proposed debarment and an opportunity to respond. Vendors debarred are excluded from receiving contracts, and state departments and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these vendors.

Notwithstanding the debarment or proposed debarment of a vendor, contracts or subcontracts in existence at the time a vendor is debarred may continue unless cancelled pursuant to the cancellation clause of the contract. Ordering activities may continue against existing contracts in the absence of cancellation. However, contracts with debarred vendors may not be renewed or otherwise extended.